

ASSEMBLY BILL

No. 225

Introduced by Assembly Member Beall

January 29, 2007

An act to amend Section 653m of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 225, as introduced, Beall. Crime.

Existing law provides that it is a crime punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment, for any person to make repeated telephone calls or contacts with intent to annoy another person at his or her residence. Existing law also provides that it is a crime punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment to make such calls or contacts to a person at his or her place of work if there is a court order in effect prohibiting this behavior or more than 10 contacts are made in a 24-hour period and they are made to the workplace of a person with a specified familial or personal relationship with the defendant.

This bill would delete the latter provisions and instead provide that any person who makes 5 or more repeated contacts within a 24-hour period by means of an electronic device, as defined, with intent to annoy another person is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment. This bill would also provide that these provisions are violated if any person knowingly permits any telephone or electronic device under his or her control to be used to commit the prohibited acts.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653m of the Penal Code is amended to
2 read:

3 653m. (a) Every person who, with intent to annoy, telephones
4 or makes contact by means of an electronic communication device
5 with another and addresses to or about the other person any obscene
6 language or addresses to the other person any threat to inflict injury
7 to the person or property of the person addressed or any member
8 of his or her family, is guilty of a misdemeanor. Nothing in this
9 subdivision shall apply to telephone calls or electronic contacts
10 made in good faith *or during the ordinary course and scope of*
11 *business.*

12 (b) Every person who makes ~~repeated telephone calls or makes~~
13 ~~repeated contact~~ *five or more repeated contacts within a 24-hour*
14 *period* by means of an electronic communication device with intent
15 to annoy another person ~~at his or her residence~~, is, whether or not
16 conversation ensues from making the telephone call or electronic
17 contact, guilty of a misdemeanor. Nothing in this subdivision shall
18 apply to telephone calls or electronic contacts made in good faith
19 *or during the ordinary course and scope of business.*

20 (c) ~~Every person who makes repeated telephone calls or makes~~
21 ~~repeated contact by means of an electronic communication device~~
22 ~~with the intent to annoy another person at his or her place of work~~
23 ~~is guilty of a misdemeanor punishable by a fine of not more than~~
24 ~~one thousand dollars (\$1,000), or by imprisonment in a county jail~~
25 ~~for not more than one year, or by both that fine and imprisonment.~~
26 ~~Nothing in this subdivision shall apply to telephone calls or~~
27 ~~electronic contacts made in good faith. This subdivision applies~~
28 ~~only if one or both of the following circumstances exist:~~

1 ~~(1) There is a temporary restraining order, an injunction, or any~~
2 ~~other court order, or any combination of these court orders, in~~
3 ~~effect prohibiting the behavior described in this section.~~

4 ~~(2) The person makes repeated telephone calls or makes repeated~~
5 ~~contact by means of an electronic communication device with the~~
6 ~~intent to annoy another person at his or her place of work, totaling~~
7 ~~more than 10 times in a 24-hour period, whether or not~~
8 ~~conversation ensues from making the telephone call or electronic~~
9 ~~contact, and the repeated telephone calls or electronic contacts are~~
10 ~~made to the workplace of an adult or fully emancipated minor who~~
11 ~~is a spouse, former spouse, cohabitant, former cohabitant, or person~~
12 ~~with whom the person has a child or has had a dating or~~
13 ~~engagement relationship or is having a dating or engagement~~
14 ~~relationship.~~

15 ~~(d)~~

16 (c) Any offense committed by use of a telephone may be deemed
17 to have been committed where the telephone call or calls were
18 made or received. Any offense committed by use of an electronic
19 communication device or medium, including the Internet, may be
20 deemed to have been committed when *and where* the electronic
21 communication or communications were originally sent or first
22 viewed by the recipient.

23 ~~(e)~~

24 (d) Subdivision (a), ~~(b)~~, or ~~(e)~~ (b) is violated when the person
25 acting with intent to annoy makes a telephone call *or electronic*
26 *contact* requesting a return call *or return electronic contact* and
27 performs the acts prohibited under subdivision (a), ~~(b)~~, or ~~(e)~~ (b)
28 upon receiving the return call *or return electronic contact*.

29 (e) *Subdivision (a) or (b) is also violated if a person knowingly*
30 *permits any telephone or electronic device under his or her control*
31 *to be used to violate those subdivisions.*

32 (f) If probation is granted, or the execution or imposition of
33 sentence is suspended, for any person convicted under this section,
34 the court may order as a condition of probation that the person
35 participate in counseling.

36 (g) For purposes of this section, the term “electronic
37 communication device” includes, but is not limited to, telephones,
38 cellular phones, computers, video recorders, fax machines, or
39 pagers. “Electronic communication” has the same meaning as the

1 term defined in Subsection 12 of Section 2510 of Title 18 of the
2 United States Code.

3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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